

MINUTES
Montana Fish, Wildlife & Parks Commission Meeting
Colonial Red Lion
Helena, MT
MARCH 13, 2008

Commission Members Present: Steve Doherty, Chairman; Shane Colton, Vice-Chair via teleconference; Dan Vermillion; Willie Doll.

Fish, Wildlife & Parks Staff Present: Jeff Hagener, Director, and FWP Staff.

Guests: See March 13, 2008 Commission file folder for those who signed in.

Topics of Discussion:

1. **Call to Order - Pledge of Allegiance**
2. **Approval of Commission Meeting Minutes of February 20, 2008**
3. **Approval of Commission Expenses through February, 2008**
4. **Region 6 Headquarters Addition – Final**
5. **Fire Emergency Closure Administrative Rule – Tentative**
6. **Future Fisheries Projects - Final**
7. **Canyon Ferry Reservoir and Lake Helena Commercial Fishing Regulations – Final**
8. **Cedar Creek Water Rights Acquisition – Final**
9. **Silver Lake Fishing Access Site in Region 2 – Endorsement**
10. **Angling Restriction and Fishing Closure ARM – Tentative**
11. **Peregrine Falcon Take Proposal, Including Quotas - Final**
12. **Grizzly Bear Resolution – Final**
13. **Livestock Loss Reduction and Mitigation Board Nominations Process–Endorsement**
14. **Reconsideration of 2008-2009 Antelope Archery and Elk Archery (Outside the Missouri Breaks) Hunting Regulations Adopted at the February 20, 2008 Commission Meeting**
15. **Open Microphone – Public Opportunity to Address Additional FWP Issues**

1. Opening - Pledge of Allegiance. Chairman Doherty called the meeting to order at 8:30 a.m. and led the Pledge of Allegiance.

2. Approval of February 20, 2008 Commission Meeting Minutes.

Action: Doll moved and Vermillion seconded the motion to approve the February 20, 2008 meeting minutes. Motion carried

3. Approval of February, 2008 Commission Expense Report.

Action: Doll moved and Vermillion seconded the motion to approve the February expense report as presented. Motion carried.

4. Region 6 Headquarters Addition – Final. Larry Peterman, FWP Chief of Field Operations, explained that FWP proposed to purchase 1.5-acres of undeveloped private land adjacent to the existing Region 6 Headquarters in Glasgow. The purpose of acquiring this property is to secure space for storage of FWP machinery, tools and materials, and to provide additional parking. The landowner, Mountain States Leasing, has agreed to sell the parcel to FWP for \$38,000, which is what it appraised for. No comments were received in response to the Environmental Assessment.

Action: Doll moved and Vermillion seconded the motion to approve the purchase of the Mountain States Leasing property in Glasgow for its appraised value of \$38,000 as an addition to the Region 6 headquarters site. Motion carried.

Peterman added that an adjacent neighbor has indicated that he has .8 of an acre he might want to sell to FWP. The Department is asking for Commission permission to explore this additional acreage.

Action: Doll moved and Vermillion seconded the motion to direct FWP to initiate discussions with the neighbor regarding purchase of the .8 acre of land adjacent to R6 Headquarters. Motion carried.

5. Fire Emergency Closure Administrative Rule – Tentative. Larry Peterman, FWP Chief of Field Operations, explained that FWP receives requests each year to close waters during fire emergencies so fire fighting aircraft can safely scoop or dip water without endangering the public. This has happened seven times since 2003, and is expected to become a routine occurrence.

The current procedure requires that a quorum of commissioners must initiate an emergency closure, which is time consuming and could be problematic if a quorum could not be pulled together quickly. Therefore, the Department is recommending adoption of an administrative rule that would delegate authority to the FWP Director to close public waters when public health, safety and welfare may be jeopardized when aircraft needs to load water to fight fires.

The Department would determine if there is imminent peril to public prior to issuing a closure, and would reopen the water when the threat passes. The Department would post the notice of closure on the FWP website, would notify the Commission, and would issue a news release to inform the public. If approved, the process should be complete by June in time for fire season.

Action: Vermillion moved and Doll seconded the motion to proceed with the ARM rule process for the proposed fire emergency closure rule. Motion carried.

6. Future Fisheries Projects – Final. The Future Fisheries Improvement Program provides funds for approved projects that restore and benefit wild fishery habitats in streams, rivers, and lakes. Applications for funds are reviewed twice a year by a citizen review panel appointed by the Governor, after which their recommendations are forwarded to the Commission for approval.

Glenn Philips, FWP Fisheries Division Habitat Protection Bureau Chief, stated that the panel has recommended 19 projects totaling \$471,000 for the January 2008 funding cycle. He noted that the Gold Creek project in Powell County is recommended contingent on whether additional cfs will be gained by replacing the current flood irrigation system with a center pivot system. Those types of projects have been approved in the past, but normally a year's data is provided to validate water savings. In this case the landowner proceeded quicker than expected, therefore no data is available.

Action: Vermillion moved and Doll seconded the motion to approve the recommended future fisheries projects, excluding the Gold Creek project. Motion carried.

Doherty questioned the absence of proposals in central and eastern Montana. Phillips said that question has come up a number of times, and the explanation is that there are not as many waters in those areas. When there are projects there, they are large ones.

Action: Vermillion moved and Doll seconded the motion to approve the Gold Creek project in Powell County contingent on confirmation that it will result in a water savings. Motion carried.

7. Canyon Ferry Reservoir and Lake Helena Commercial Fishing Regulations – Final. Chris Hunter, FWP Fisheries Division Administrator, stated that Richard Greene has applied annually, since 2003, for a commercial fishing (seining) permit for Canyon Ferry Lake and Lake Helena to harvest carp. No carp have been harvested for the past two years, but Mr. Greene says he has an investor this year that wants to process the fish. There are stipulations attached to the license that prohibit interference with waterfowl and fishing. Monthly reports of harvest activity are also required.

The Commission is authorized by statute to approve one commercial fishing operation for each body of water, and to establish specific regulations regarding gear, limits, seasons, closures and any other limitations deemed necessary. This application is for a Class B Permit that requires a fee of \$200 plus a \$1,000 Surety Bond.

Action: Doll moved and Vermillion seconded the motion to approve the regulations for commercial fishing on Canyon Ferry Reservoir and Lake Helena for 2008 as proposed. Motion carried.

8. Cedar Creek Water Rights Acquisition – Final. Chris Hunter, FWP Fisheries Division Administrator, explained that FWP has leased water rights on Cedar Creek from the U.S. Forest Service and a private landowner on Cedar Creek for several years. Cedar Creek is a tributary to the Yellowstone River near Corwin Springs, and provides 3 cubic feet per second (cfs) of instream flow vital to maintaining Yellowstone cutthroat populations. The landowner now wishes to sell the water rights to FWP.

The legislature authorized FWP to permanently change water rights to instream flow on 12 stream reaches, and because Cedar Creek is so beneficial toward maintaining a viable Yellowstone cutthroat population, it warrants inclusion as one of those reaches. Once the private water rights are acquired, FWP would change them to instream flow.

FWP staff has negotiated a purchase price of \$75, 000 for the water rights based on a comparison of irrigated and non-irrigated land values. The present investment in the remaining 26 years of the existing lease was considered in determining the payment for the water rights. Future Fisheries funds would provide half of the funding, and other FWP sources would be utilized to provide the balance.

Action: Vermillion moved and Doll seconded the motion to purchase the privately owned water rights currently leased on Cedar Creek for the purpose of changing them permanently to in-stream fishery use. Motion carried.

9. Silver Lake Fishing Access Site in Region 2 – Endorsement. Chris Hunter, FWP Fisheries Division Administrator, explained that the proposed Silver Lake Fishing Access Site acquisition is located on the west shore of Silver Lake just east of Georgetown Lake. It is privately owned and encompasses about 31 acres, of which about 23 acres is under water part or all of the year.

The lake currently provides a good trout fishery despite little natural recruitment and no stocking. It is anticipated that with tributary stream enhancements, and possibly stocking, that the fishery would become very good to excellent. Silver Lake is a natural lake and is thought to be bottomless. This is a great opportunity to obtain access to the lake.

The site appraised at \$330,000. If the Commission endorses this proposal, negotiations with the landowner will begin. Funds would be provided through Natural Resource Damage grant monies.

Action: Vermillion moved and Doll seconded the motion to authorize the Department to pursue acquisition of the Silver Lake fishing access site. Motion carried.

10. Angling Restriction and Fishing Closure ARM – Tentative. Chris Hunter, FWP Fisheries Division Administrator, explained that each spring the Department asks the Commission for authority to close streams to fishing if water temperatures and/or flows become so low that continued angling pressure could impact fish populations. Establishing an Administrative Rule would authorize the Department to close, and reopen, waters to fishing when criteria are met rather than requesting authority on an annual basis. There are two types of restrictions. One is the closure to angling during specified hours, usually from 2:00pm until midnight. The other restriction is a total closure to angling. There are no voluntary closures. If this is approved, it can go into effect by the end of June once it has gone through the proper procedures of public comment and filing with the Secretary of State.

Action: Vermillion moved and Doll seconded the motion that the Department proceed with the Administrative Rule process for the proposed drought angling restriction rule. Motion carried.

11. Peregrine Falcon Take Proposal, Including Quotas – Final. Jeff Herbert, FWP Wildlife Division Assistant Administrator, stated that the comment period following tentative approval generated 64 comments. He said 78% of the comments support the proposal, and those in opposition believe it inappropriate to possess birds of prey primarily because captive bred peregrines are available for falconry purposes, and because of the concern that the proposal was premature relative to the status of the breeding population in Montana.

The Department recommends adopting a rule to authorize limited take of nestling peregrine falcons by licensed Montana falconers as follows: Allowable take of no more than three young peregrines in 2008. Take would be restricted to the June 1 to July 15 time period. The limit would be one peregrine for each successful applicant. Take would be prohibited from eastern Montana so as to encourage an expansion of the breeding population. Take from certain nests would be prohibited due to high value wildlife viewing opportunities and or on-going agency-approved research efforts. The sale, barter or exchange of birds from the wild is prohibited. Each falconer who receives a permit will get a band and instructions on reporting and notification.

The Department will utilize the peregrine working group to assess the need to potentially modify existing Administrative Rules (through a formal hearing process) after on-going federal rule making pertaining to falconry regulations is completed. This will be an annual process to accommodate federal regulation changes.

Doll asked if a representative from FWP will be present when a bird is banded, or if a feather would be taken for DNA purposes.

Herbert said the falconer is required to bring the banded bird in for FWP to inspect within five days of capture, and then again in 30 days.

Doherty asked why the number of fledglings has declined. Herbert said the wet and cold weather may have influenced their survival. He is not aware of West Nile virus in peregrines.

Action: Vermillion moved and Doll seconded the motion to approve the Department's recommendation to authorize the limited take of up to three nestling peregrine falcons for falconry purposes in 2008.

Chairman Doherty asked for public comment.

Ralph Rogers - there are 70 known pair in Montana. The population is sustainable. Productivity will likely go down as density increases.

Steve Hoffman, Montana Audubon – supportive of regulations, but suggested requiring falconers to report all nests they attempted to harvest from, and any problems that may have arisen in the process. Since peregrines nest throughout state, he said the line between take zones and no-take zones needs to be redrawn. Establish a permanent process on how the public can petition new nests to the Prohibited Nests list. Adopt permanent rules to allow annual harvest level to change but overall framework would remain static.

Blair Anderson, Montana Falconers Association – supports the proposed take and asked the Commission to approve it. It is conservative and will not have a bad affect on populations.

Action: Vermillion moved and Doll seconded the motion to authorize the limited take of up to three nesting peregrine falcons for falconry purpose in 2008. Motion carried.

12. Grizzly Bear Resolution – Final. *At its December 20, 2007 meeting, the FWP Commission adopted a tentative resolution requesting that the USFWS fulfill the commitment to complete the DPS analysis and status review for grizzly bears in the contiguous states by December 31, 2008, and communicate to the Montana Congressional Delegation the FWP Commission's belief that significant and sustained funding to support state management of grizzly bears is both necessary and appropriate in view of the national interest in this species.*

Ken McDonald, FWP Wildlife Division Administrator, stated that public comment was accepted from December 21, 2007 through February 1, 2008. Three hundred written comments were received in the form of emails, letters, and web comments. Only seven of those comments specifically addressed the resolution, with six of the seven in support. The one opposed did not support spending any additional

money on a status review. The overwhelming majority of comments (275) were directed toward opposition to delisting from the Endangered Species Act, although that was not a component of the resolution. Of these, 267 were nearly identical form letters. Seventeen comments were in support of delisting and subsequent implementation of a hunting season, which also was not a component of the resolution.

Action: Vermillion moved and Doll seconded the motion to approve the Grizzly Bear Resolution as written. Motion carried.

13. Livestock Loss Reduction and Mitigation Board Nominations Process–Endorsement. Ken McDonald, FWP Wildlife Division Administrator, explained that the Department is once again seeking nominations for persons to serve on the Livestock Loss Reduction and Mitigation Board. This Board was created in 2007 by the Legislature to oversee a program that would provide cost-share grants to livestock producers for the purpose of reducing the risk of losses of livestock to wolf predation and to reimburse producers at fair-market value for livestock lost to wolves. The Board consists of seven members appointed by the Governor of which three members are selected from names submitted by the FWP Commission.

The Commission submitted names last fall, however due to the resignation of one board member recommended by FWP, the Governor has requested that the Commission submit three more names for consideration for the vacant seat. The Department recommends that the Commission issue another request for interest in serving on the board with a deadline for application of April 4, 2008, thus allowing sufficient time to make a decision by the April 17, 2008 meeting.

Action: Vermillion moved and Doll seconded the motion to solicit additional interest in serving on the Livestock Loss Reduction and Mitigation Board, with a deadline for application of April 4, 2008. Motion carried.

14. Reconsideration of 2008-2009 Antelope Archery and Elk Archery (Outside the Missouri Breaks) Hunting Regulations Adopted at the February 20, 2008 Commission Meeting. Chairman Doherty began the discussion by explaining that the Commission makes good-faith, honest decisions that they feel will benefit the resources both now and in the future. None of the Commissioners are in it for the money, and certainly are not in it to receive the abuse and name-calling that has recently been the case. When mistakes are made, the Commission will “back up and try again”. Mistakes are not intentional.

Colton stated that he does not consider this a “reconsideration”, but an “adjustment”. There was a mistake in understanding, an oversight. A correction can be made. He fully understands the concerns, and the Commission will continue to look out for the public’s interests in spite of the nasty letters they have received. Lessons have been learned. This had nothing to do with private property rights. It has to do with Montana resources, and the fair and equitable management of those resources. A preliminary requirement was that there has to be limited rifle permits, however that didn’t apply in this specific area anyway, so it was an invalid action. The Commission is not in a position to reconsider at this point, too much work has been done.

Doll agreed with Colton. A tremendous amount of information had to be absorbed and decided on at the last meeting. Montana is a large state with many considerations to keep in mind. The FWP staff has done a tremendous job. Decisions have nothing to do with devaluing ranchland. He stated there is a working group at Malta consisting of folks from all types of livelihoods who meet to discuss what they want to see done – he advised the Conrad area to do the same. They are doing things for the resources of Montana and for rifle and bow hunters. The Commission does the best job they can, and if they have made a mistake, they apologize, however keep in mind that they have tried hard to keep all things in perspective.

Vermillion said the Commission came up with the best solutions and resource management direction they felt was appropriate. It is incumbent on everyone to look down the road. Ten years from now people will look back on this moment and they will thank everyone for supporting this direction. This is an opportunity to form an advisory committee to address these issues. Communication between communities is crucial toward getting around the issues of private land and public property concerns.

Action: Doherty moved and Colton seconded the motion to readjust the boundaries and regulations for hunting in HD441 to accurately reflect the situation on the ground with respect to the Bob Marshall district. The wilderness portion that does not have limited rifle permits will continue with only general license required (no archery permits) and the HD441 portion with limited rifle permits outside the Wilderness would be subject to archery permits. For archery season only, unlimited permits are required in HD441 outside the Bob Marshall Wilderness, the rest is general tag.

Chairman Doherty asked for public comment.

Bruce Martin, Conrad, hates to lose any more opportunity. He went to meetings in January, and was not told of the options. He said this is a bad idea, and should go to areas in the Missouri Breaks for a couple of years before going statewide.

Troy Shirley asked if there will be another session to talk about this.

Doherty replied that the regulations have been made and changes were made based on comments. If there is no motion to deal with other areas, then the time to speak is during the Open Microphone portion of the meeting.

Troy Shirley said it was a shame the Commissioners received abusive phone calls. He hopes his group did not do that as they understand that the Commission tried to do the right thing. They were told at the meetings that they would not have an opportunity to speak at the Commission meetings. He said things not considered were: loss of opportunity, large elk numbers in their area but low number of trophy elk, negative economic impact to local economies, loss of tradition. The Commission should be concerned how meetings are conducted. If they choose to hunt in archery, they will be part of a flood of hunters in other areas. Please don't reduce opportunity and not include areas outside the breaks.

Doherty reminded the public that comments are to address only the specific motion on the floor which is to adjust HD441.

Ron Neumiller, Conrad, said he and his kids camp at a hunting camp that he has used for many years, and asked that the Commission not take this away from their family.

Larry Copenhaver, MWF, said his organization supports the motion, but said going to choosing your weapon creates a concern that there will be a loss of youth hunters.

Colton stated that the tentative regulations outside the Missouri Breaks were much more restrictive than what the Commission ultimately passed as final regulations. Adjustments to the regulations were made based on comments. The Commission was listening closely. The Bob Marshall regulation was a mistake, but it is a non-issue. The first choice only outside the Breaks was a mistake. The Commission does not want to force choosing a weapon.

Action on Motion: Motion carried.

Action: Colton moved and Vermillion seconded the motion that it be any choice, not first choice only for unlimited archery elk permits outside the Breaks.

Chairman Doherty asked for public comment.

Gary Carvajal said he appreciates the commission reviewing this. He apologized for the nasty letters the Commission received. The Montana Bowhunters Association does not see the reason for this, but if 1st, 2nd and 3rd choice is what you have then that is what it will be.

Colton asked Carvajal if 100 percent of MBA was unanimous on their decision. Carvajal replied that there were 14 against it and 8 in favor of it.

Steve Kamps, MBA, said the increase in applicants for 2nd and 3rd choice will set quota levels higher in 2009. Bowhunters are increasing and will continue to, so eventually they will all be applying for 1st choice tags.

Troy Shirley suggested opening the 2009 cap.

Ron Neumiller wondered if there could be a chance of going back to the 2007 regulations outside the Breaks.

Deanna Robbins said to consider what this does to the 3-year average numbers. When choosing 1st, 2nd or 3rd choice you had to put in for a district, so potentially Option C would have been best to allow time to think about things. More problems will be created.

Bill McKinley asked that since the Commission has found two mistakes, are there more that were not detected. Perhaps put a working group together and look for more. He feels there are more.

Jim Kellogg said there needs to be more research into what the Commission did. It would be best to go back to the 2007 regulations and determine the impact of the new regulations.

Colton said accepting comments now is not fair to the people who already have made comments. Comments must be limited to only the motion. The regulations were dealt with in February.

Action on motion: Motion carried.

Vermillion moved and Colton seconded the motion to address the formation of a statewide advisory committee consisting of people who would represent the interests in this process, who would meet over the next 7 months, and who would then report to the Commission on districts outside of the Missouri Breaks as issues relate to archery or elk. The Department must develop the structure and the Director's Office will receive the applications from parties interested in serving on the committee. Recommendations must be brought to the Commission at the November meeting.

Doll suggested that each region should have a working group.

Hagener asked if any changes that are recommended at the November meeting would affect the 2009 regulations that are in place now. Vermillion replied that they could. These recommendations would apply to areas outside of the Breaks.

Chairman Doherty asked for public comment.

Tom Hougan, Musselshell County, questioned why another committee would be established when there is a statewide committee already in place that is designed to do what they want this new one to do. It takes three to four meetings to gain trust among the members. He feels this is a "feel good deal". Use the committee that is already in place. The November timeframe will not allow anything to be done.

Vermillion said the PL/PW Council already has a full plate of issues to address. They are working on many other issues that are also important, and he does not want to take time away from those issues.

Bob Goffena said the situation is going to be drug out too long. His property has been devalued by half. Things should have been figured out earlier. Economics.

Robert Allen said there will be very little change so why do it. It puts more people outside the Breaks.

Seth Becker does not feel sportsman got detailed information. He commended the Commission for trying to fix the error but does not know if people know what they are fixing. Ideas should be brought to meetings for public comment. There is distrust in the process. A committee is a good idea.

Gary Carvajal said it is a good idea to have another committee addressing this situation. Maybe it should have been done in the first place. Wants to see MBA have a seat at the committee table.

Ron Neumiller agreed it is a good idea. Suggested having a Commissioner from each region serve on the committee too.

When asked where the Citizen Advisory Councils fit in, Vermillion stated that they were separate from this issue and that their information would also be included. Doll stated that the CACs have to do with everything but this particular committee would be specific to archery and elk hunting. Colton said this committee will not discount the PL/PW, but will be a different representative body that needs people from that area to be involved. It is not a "feel good deal".

Joell Selk, MBA, said she appreciates the additional opportunity to be engaged in this discussion. She encouraged the Commission to advertise this well so everyone is aware. MBA will be involved in the process and hopes other groups will as well.

Doll encouraged people to contact Commissioners no matter where they live in Montana. Decisions affect the whole state.

Action on motion: Motion carried.

15. Open Microphone – Public Opportunity to Address Additional FWP Issues.

Bob Goffena said Musselshell County is economically depressed. Much of their income comes from the outfitters and out of state hunters. They are impacted. He feels one reason for the Commission action is to force ranchers to allow hunters on their ranch. When he sells his ranch it may go to someone who closes it to hunting.

Robert Allen suggested that when FWP conducts aerial surveys, they should not count animals that are on land where the landowners don't allow hunting. Require mandatory reporting.

Bruce Martin hopes we haven't jumped into something too big by looking down the road ten years.

Stan Huhtala said a committee is a good thing. Fire danger in the Sweetgrass Hills affects the season. He feels there is a loss of opportunity for youth.

Bill McKinley said one concern at a local meeting was regarding antelope archery. Asked the commission to consider to having a set number.

Rod Bullis said there is a private land sanctuary in the middle of HD298 that does not allow hunting. He asked that FWP monitor this and keep a close eye on this district.

Cooper Martin feels folks in his area near Great Falls have not had equal opportunity to express their ideas because there are no commissioners located in the district. He would like the Department to have seven Commissioners – one from each region.

Kirby Swanson said there is a lot of turmoil with landowners toward FWP. He will not allow hunting on his land.

Action: Vermillion moved and Doll seconded the motion to adjourn the meeting. Motion carried.

Meeting adjourned at 11:40 a.m.

Steve Doherty, Chairman

M. Jeff Hagener, Director